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Judge urges CBS jury to ignore Time verdict

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NEW YORK — When Ariel Sharon's \$50 million libel suit against Time Inc. went to a jury two weeks ago, U.S. District Judge Pierre Leval decided it was time to

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discuss the Sharon case with his own jury, which was hearing evidence in Gen. William C. Westmoreland's libel suit against CBS news.

With uncharacteristic solemnity, Judge Leval told the jury there was no connection between the suits, instructing them to ignore the deliberations taking place just two floors below in Manhattan's federal courthouse.

Furthermore, the judge cautioned the jurors not to be influenced by the final verdict of the Sharon trial but to continue to concentrate on the myriad facts and testimony before them.

His comments weren't merely a perfunctory judicial warning.

While there are many intriguing similarities between the two landmark libel suits — a pair of retired generals simultaneously slugging it out in court with two media giants in an effort to salvage their reputations — most of the comparisons deal with superficialities or coincidences.

In terms of substance and evidence, the cases are miles apart. Where the former Israeli defense minister failed to convince a jury he was libeled by Time magazine, Gen. Westmoreland could still succeed.

After nearly four months and with just three more weeks of testimony scheduled in the trial, Gen. Westmoreland and his attorneys have presented an impressive case against

CBS, which is defending allegations made by correspondent Mike Wallace in a January 1982, documentary, "The Uncounted Enemy: A Vietnam Deception."

In that program, Mr. Wallace charged the former commander of U.S. forces in Vietnam with heading a "conspiracy" to withhold information from his military and civilian superiors concerning enemy troop strength in the months leading up to the 1968 Tet offensive.

CBS charged that for political reasons Gen. Westmoreland ordered his subordinates to "alter critical intelligence data" concerning enemy numbers, a "deliberate plot" which CBS charged resulted in President Johnson and the Pentagon being "caught totally unprepared for the attack."

In an effort to refute those allegations, Gen. Westmoreland assembled a dizzying array of witnesses and thousands of documents, many of them formerly classified cables, to show that his superiors were not only aware of wide variations in enemy troop counts but held meetings and debated intelligence data months prior to the Tet offensive.

Meanwhile, CBS attorneys have managed under cross-examination to raise doubts about how much Johnson administration officials told the American public concerning the enemy buildup, but they have yet to produce a witness or document to prove unequivocally that Gen. Westmoreland could or did personally direct a cover-up.

But, as Mr. Sharon discovered last week, being exonerated and proving libel are two separate matters.

One of the few significant similarities between the two suits is that, like Mr. Sharon's, Gen. Westmoreland's case will be judged against the same restrictive U.S. libel laws.

Those laws require that public officials, like the two former military leaders, not only prove they were defamed by false accusations but that those making the allegations did so knowing they were false or with reckless disregard for the truth.

The jury hearing evidence in Mr. Sharon's case decided after 11 days of intensive deliberations that the magazine had published an article which was false and defamatory. For good measure the jury also issued an unusual statement charging Time reporters and editors with carelessness and negligence. Nonetheless, the jury decided that Mr. Sharon had not provided "clear and convincing evidence" that Time knew the accusations were false.

Consequently, the suit against the magazine was dismissed.

The Time trial ran nine weeks and focused almost entirely on a single paragraph published in its Feb. 21, 1983, edition charging that Mr. Sharon had "discussed the need for revenge" with Phalangist leaders one day before their soldiers entered two Palestinian refugee camps and massacred hundreds of unarmed civilians.

Few witnesses other than Time employees were called to testify and fewer still were the number of documents presented in the case.

Gen. Westmoreland's suit against CBS suffers none of those shortcomings.

Virtually all of Gen. Westmoreland's living former military and civilian superiors, including dozens of top Johnson administration advisors, cabinet officials, ambassadors, CIA directors and former members of the Joint Chiefs of Staff have either testified or submitted affidavits categorically denying CBS' assertions that the general withheld information concerning enemy troop figures.

All of those witnesses have sup-

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ported Gen. Westmoreland's contention that throughout 1967 Johnson administration civilians and intelligence officials haggled over whether to continue to count mostly unarmed Vietcong "irregular" forces with official Order of Battle troop estimates.

Scores of once classified cables submitted as evidence in the court show that for several months leading up to the Tet Offensive Gen. Westmoreland's superiors debated and even held two high level conferences to hammer out differences concerning the Order of Battle dispute.

Attorneys for the 70-year-old retired general are confident that the cables coupled with the testimony of some 80 former government officials will prove that the CBS report was false and defamatory.

In order to win a libel judgment, Gen. Westmoreland must also prove CBS either knew the report was false or ignored evidence that contradicted the allegations.

Unlike the jury in the Sharon-
Time case, which had to decide this crucial point almost entirely on the testimony of magazine employees, jurors in Gen. Westmoreland's trial will have more than hearsay evidence to consider when they begin deliberations.